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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In re Patent Application of — Appeal No.: 2005-0113

TIGHE et al — Atty. Ref.: 540-204

Serial No. 09/582,760 — TC/A.U.: 3644

Filed: June 30, 2000 — Examiner: G. Barefoot

For: AIRCRAFT STRUCTURE FATIGUE ALLEVIATION

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December 2, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

STATUS INQUIRY

A Request for Rehearing Pursuant to Title 37, Part 41.52 was filed on May 10, 2005. To date, Appellant has not received a response from the Board of Patent Appeals and Interferences. Inquiry is made as to when an Action will be forthcoming.

It was mailed 11/17/05 Attached

Respectfully submitted,

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte DAVID J. TIGHE
and
ANDREW D. WILLIAMS

Appeal No. 2005-0113
Application No. 09/582,760

HEARD: February 23, 2005

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.[1]

NASE, Administrative Patent Judge.

ON REQUEST FOR REHEARING

This is in response to the appellants' request for rehearing[2] of the decision mailed March 10, 2005, wherein the examiner's rejection of claims 1, 2, 4 and 8 to 10 under 35 U.S.C. § 103 was affirmed and the examiner's rejection of claims 3 and 5 to 7 under 35 U.S.C. § 103 was reversed.

[1] Cohen, Administrative Patent Judge, retired before this case was reached for rehearing. Legal support for substituting one Board member for another can be found in In re Bose Corp., 772 F.2d 866, 869, 227 USPQ 1, 4 (Fed. Cir. 1985).

[2] Filed May 10, 2005.

We have carefully considered the arguments raised by the appellants in their request for rehearing, however, those arguments do not persuade us that the decision of March 10, 2005 was in error in any respect.

The first argument (pp. 2-6) raised by the appellants is that neither the examiner nor the Board has conducted the proper evaluation of the four "means" recitations set forth in claim 1. We do not agree. The decision of March 10, 2005 (pp. 3-8) clearly set forth the pertinent teachings of the applied prior art (Makhonine and Bell). The decision of March 10, 2005 (pp. 9-12) then set forth both the examiner's and the panel's rationales as to why the subject matter of claim 1 would have been obvious at the time the invention was made to a person having ordinary skill in the art. In both rationales, it is clear that while no single reference teaches any one of the four "means" recitations set forth in claim 1, the combined teachings of the references are suggestive of all four "means" recitations set forth in claim 1.[3] In that regard, we note that the structure underlying the four "means" recitations suggested by the combined teachings of the references is the same as that disclosed by the applicants (i.e., a computer receiving and sending various signals).

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[3] The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The second argument (pp. 6-9) raised by the appellants is that there is no reason or motivation for combining the Makhonine and Bell references. We do not agree. The decision of March 10, 2005 (p. 11) clearly sets forth the reason and motivation for combining the Makhonine and Bell references.

The third and last argument (pp. 9-12) raised by the appellants is that the Board's adoption of the "inherency" principle (at p. 11 of the decision) requires that the cited prior art must have a clear teaching of the missing material and the Board has failed to identify any clear teaching. We do not agree. It is our view that the cited teachings of Makhonine do provide a clear teaching that (1) a person (if not in fact an automated sensor) onboard the aircraft (e.g., the pilot, flight engineer, etc.) actuates some type of switch after the aircraft has left the ground which causes pumps j to initiate the transfer of fuel from the inboard tanks f to the outboard tanks g, and (2) a person (if not in fact an automated sensor) onboard the aircraft (e.g., the pilot, flight engineer, etc.) actuates some type of switch before the aircraft lands which causes pumps k to initiate the transfer of fuel from the outboard tanks g to the inboard tanks f.

In light of the foregoing, the appellants' request for rehearing is granted to the extent of reconsidering our decision, but is denied with respect to making any change thereto.

No period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REQUEST FOR REHEARING - DENIED

CHARLES E. FRANKFORT
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

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